



JOHN CORNYN

April 26, 2001

Mr. Howard D. Bye
Matthews & Branscomb
112 East Pecan, Suite 1100
San Antonio, Texas 78205

OR2001-1705

Dear Mr. Bye:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145998.

The City Public Service of San Antonio ("CPS"), which you represent, received a request for twelve categories of information concerning CPS's customers including: (1) customer service connection and disconnection dates; (2) account numbers; (3) names; (4) telephone numbers; (5) service, mailing, and forwarding addresses; (6) a record layout showing field descriptions; (7) social security and driver's license numbers; (8) the code field identifying commercial and residential accounts; and (9) the code field identifying requests for privacy. You claim the information is excepted from disclosure under sections 552.101, 552.104, 552.110, 552.130, and 552.131 of the Government Code. We note that because you assert no exceptions and make no arguments with reference to the record layout and code fields identifying commercial and residential accounts and requests for privacy, we assume CPS has released this information to the requestor. If CPS has not released the information, it must do so. *See Gov't Code §§ 552.301, .302.* We limit our ruling to items (1) - (5) and (7) above. We have considered the exceptions you claim and reviewed the requestor's letter of March 12, 2001.

Subsections 552.301(a) and (b) provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

You state that CPS received the request for information on October 25, 2000. You did not request a decision from this office until February 7, 2001. You rely on Open Records Letter No. 2000-4835 (2000) and Open Records Letter No. 2001-0184 (2001) as previous determinations excepting you from the requirements of section 552.301. We note, however, that Open Records Letter No. 2000-4835 and Open Records Letter No. 2001-0184 were both issued *after* your initial request was received and therefore may not now be retroactively applied to the immediate request. Consequently, you failed to request a decision within the ten business day period mandated by section 552.301(a) of the Government Code. Because the request for a decision was not timely received, the requested information is presumed to be public information. Gov't Code § 552.302.

In order to overcome the presumption that the requested information is public information, CPS must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). Section 552.104 is not a compelling reason to overcome the presumption of openness. However, you assert the requested information is excepted from required disclosure pursuant to sections 552.101, 552.110, 552.130 and 552.131 of the Government Code. The applicability of these sections to the submitted information provides a compelling reason which will overcome the presumption that the information is subject to required disclosure. Therefore, we will address your arguments under these exceptions.

Section 552.131, as added by Senate Bill 7,¹ excepts from disclosure a public power utility's information related to a competitive matter. The exception defines "competitive matter" as a matter the public power utility governing board in good faith determines by vote to be related to the public power utility's competitive activity. The governing body must also, in like manner, determine that the release of the information would give an advantage to competitors or prospective competitors. Section 552.131(a)(3) lists thirteen categories of information that may not be deemed competitive matters. The attorney general may conclude that section 552.131 is inapplicable to the requested information only if, based on the information provided, the attorney general determines the public power utility governing body has not acted in good faith in determining that the issue, matter, or activity is a competitive matter or that the information requested is not reasonably related to a competitive matter. Gov't Code § 552.131(c). Further, section 552.131(b) provides:

¹ Act of May 27, 1999, 76th Leg., R.S., ch. 405, § 46 (codified at Gov't Code § 552.131).

Information or records are excepted from the requirements of Section 552.021 if the information or records are reasonably related to a competitive matter, as defined in this section. Excepted information or records include the text of any resolution of the public power utility governing body determining which issues, activities, or matters constitute competitive matters. *Information or records of a municipally owned utility that are reasonably related to a competitive matter are not subject to disclosure under this chapter*, whether or not, under the Utilities Code, the municipally owned utility had adopted customer choice or serves in a multiply certificated service area. This section does not limit the right of a public power governing body to withhold from disclosure information deemed to be within the scope of any other exception provided for in this chapter, subject to the provisions of this chapter.

Gov't Code § 552.131(b) (emphasis added).

CPS passed a resolution by vote pursuant to section 552.131 in which it was determined that “[a]ll information regarding retail customers” was a competitive matter, which, if disclosed, would provide an advantage to existing or prospective competitors. The requested customer information thus relates to a competitive matter as defined under the CPS resolution. Furthermore, the requested information is not among the thirteen categories of information expressly exempted from the definition of competitive matter and we have no evidence CPS acted in bad faith. Consequently, we agree that the requested customer information relates to a competitive matter in accordance with CPS’s resolution, and therefore, is excepted from disclosure pursuant to section 552.131 of the Government Code.

The requestor states that “section 552.131 notwithstanding, the information must be released to Coe under Texas Utilities Code Chapter 182 in conjunction with prior decisions of the Attorney General that Coe is a consumer reporting agency.” We note that section 182.052(a) of the Utilities Code pertains to the confidentiality of certain information of customers of a government-operated utility.² Section 182.052 provides in relevant part:

(a) Except as provided by Section 182.054, a government-operated utility may not disclose personal information in a customer’s account record if the customer requests that the government-operated utility keep the information confidential.

Util. Code § 182.052(a). “Personal information” under section 182.052(a) means an individual’s address, telephone number, or social security number. *See* Util. Code

² “‘Government-operated utility’ means a governmental body or an entity governed by a governmental body that, for compensation, provides water, wastewater, sewer, gas, garbage, electricity, or drainage service.” Util. Code § 182.051(3).

§ 182.051(4). Further, section 182.054 states, “[t]his chapter does not prohibit a government-operated utility from disclosing personal information in a customer’s account record to . . . a consumer reporting agency[.]” *Id.* § 182.054(3). In Open Records Decision No. 625, the attorney general reasoned “[b]ecause House Bill 859 [, which enacted the predecessor to section 182.052,] does not prohibit a government-operated utility from disclosing personal information to the persons and entities listed in section 5, the Open Records Act requires the government-operated utility to disclose the personal information to those persons and entities.” Open Records Decision No. 625 at 7 (1994). Open Records Decision No. 625 further noted that the customer information must be released to the entities listed in section 5 unless it falls within one of the exceptions then listed in the Public Information Act. *Id.* In Open Records Decision No. 625, the only exception raised was House Bill 859 and no other exceptions applied to withhold the personal information. *Id.* Thus, although section 182.052 of the Utilities Code “does not prohibit” a government-operated utility from disclosing personal information in a customer’s account record to a consumer reporting agency, the Public Information Act no longer requires the release of that information due to the passage of Senate Bill 7 resulting in the codification of section 552.131 of the Government Code. Accordingly, CPS must withhold from the requestor the information requested in items (1) - (5) and (7) under section 552.131 of the Government Code.³ Because section 552.131 is dispositive, we need not address your other claimed exceptions.

In summary, CPS must release the record layout, the code field identifying commercial and residential accounts, and the code field identifying requests for privacy. CPS may withhold customers’ personal information including addresses, telephone numbers, and social security numbers. In addition, CPS must withhold customer service connection and disconnection dates, account numbers, names, and driver’s license numbers.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

³ The requestor cites to Title 16 of the Texas Administrative Code (the “Code”) in an attempt to distinguish “directory customer information” from “proprietary customer information,” thus affording itself a special right of access to the requested information. We note, however, that section 25.272 of the Code applies to private utilities, not a municipal corporation. 16 T.A.C. § 25.272(a); Util. Code § 31.002(1), and that section 25.472 of the Code only applies to utilities that have opted to be a competitive retailer. Consequently, neither section is controlling in this request.

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

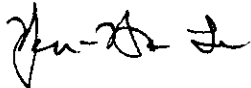
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/DBF/seg

Ref: ID# 145998

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